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Attorneys for the United States of America

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

LEON B. HOPPE, JR.,

Plaintiff,

v.

UNITED STATES OF AMERICA, UNITED
 STATES POST OFFICE, UNITED STATES
 POSTAL SERVICE, and
 DOES 1 to 100,

Defendants.

No. C11-0540 RS

**STIPULATION FOR COMPROMISE
 SETTLEMENT AND RELEASE;
~~[PROPOSED]~~ ORDER**

It is hereby stipulated by and between the undersigned Plaintiff and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

WHEREAS, Plaintiff filed the above-captioned action on February 4, 2011;

WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to settle and compromise fully any and all claims and issues that have been raised, or could have been raised in this action, which have transpired prior to the execution of this Settlement Agreement ("Agreement");

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE ~~[PROPOSED]~~ ORDER
 C11-0540 RS

1 NOW, THEREFORE, in consideration of the mutual promises contained in this
2 Agreement, and other good and valuable consideration, the Parties agree as follows:

3 1. **Agreement to Compromise Claims.** The Parties do hereby agree to settle and
4 compromise each and every claim of any kind, whether known or unknown, arising directly or
5 indirectly from the acts or omissions that gave rise to the above-captioned action under the terms
6 and conditions set forth in this Agreement.

7 2. **Definition of "United States of America."** As used in this Agreement, the United
8 States of America shall include its current and former agents, servants, employees, and attorneys,
9 as well as the United States Postal Service, and/or its current and former agents, servants,
10 employees, and attorneys.

11 3. **Definition of "Parties."** As used in this Agreement, the Parties are defined to be only
12 the United States of America and Leon B. Hoppe, Jr.

13 4. **Settlement Amount.** The United States of America agrees to pay the sum of three
14 hundred ninety seven thousand five hundred dollars and zero cents (\$397,500.00) ("Settlement
15 Amount"), which sum shall be in full settlement and satisfaction of any and all claims, demands,
16 rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and
17 all known and unknown, foreseen and unforeseen personal injuries, damage to property and the
18 consequences thereof, resulting, and to result, from the subject matter of this settlement,
19 including any claims for wrongful death, for which Plaintiff or his guardians, heirs, executors,
20 administrators, or assigns, and each of them, now have or may hereafter acquire against the
21 United States of America.

22 5. **Release.** Plaintiff and his guardians, heirs, executors, administrators or assigns hereby
23 agrees to accept the Settlement Amount in full settlement and satisfaction of any and all claims,
24 demands, rights, and causes of action of whatsoever kind and nature, including claims for
25 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and
26 unforeseen personal injuries, damage to property and the consequences thereof which they may
27 have or hereafter acquire against the United States of America on account of the same subject
28 matter that gave rise to the above-captioned action, including any future claim or lawsuit of any

1 kind or type whatsoever, whether known or unknown, and whether for compensatory or
 2 exemplary damages. Plaintiff and his guardians, heirs, executors, administrators or assigns
 3 further agrees to reimburse, indemnify and hold harmless the United States of America from and
 4 against any and all such causes of action, claims, liens, rights, or subrogated or contribution
 5 interests incident to or resulting from further litigation or the prosecution of claims by Plaintiff or
 6 his guardians, heirs, executors, administrators or assigns against any third party or against the
 7 United States, including claims for wrongful death.

8 **6. Dismissal of Action.** In consideration of the payment of the Settlement Amount and
 9 the other terms of this Agreement, Plaintiff shall immediately upon execution of this Agreement
 10 also execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The
 11 Stipulation of Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that
 12 could have been asserted in this action. The fully executed Stipulation of Dismissal will be held
 13 by Defendant's attorney and will be filed no earlier than fifteen (15) business days after receipt
 14 by Plaintiff's attorney of the check for the Settlement Amount, unless on the fifteenth day after
 15 receipt of the check by Plaintiff's attorney, the check has not yet cleared and Plaintiff's attorney
 16 notifies Defendant's attorney that the check has not yet cleared. Plaintiff's attorney agrees to
 17 deposit the check for the Settlement Amount within five (5) business days of his receipt of the
 18 check.

19 **7. No Admission of Liability.** This stipulation for compromise settlement is not
 20 intended to be, and should not be construed as, an admission of liability or fault on the part of the
 21 United States, and it is specifically denied that it is liable to the Plaintiff. This settlement is
 22 entered into by all parties for the purpose of compromising disputed claims and avoiding the
 23 expenses and risks of further litigation.

24 **8. Parties Bear Their Own Costs.** It is also agreed, by and among the Parties, that the
 25 respective Parties will each bear their own costs, fees, and expenses and that any attorney's fees
 26 owed by the Plaintiff will be paid out of the Settlement Amount and not in addition thereto.

1 9. **Attorney's Fees.** It is also understood by and among the Parties that pursuant to Title
 2 28, United States Code, Section 2678, attorney's fees for services rendered in connection with
 3 this action shall not exceed 25 per centum of the amount of the compromise settlement.

4 10. **Authority.** The persons signing this Agreement warrant and represent that they
 5 possess full authority to bind the persons or entities on whose behalf they are signing to the terms
 6 of the settlement.

7 11. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
 8 Section 1542 are set forth below:

9 "A general release does not extend to claims which the creditor
 10 does not know or suspect to exist in his or her favor at the time of
 11 executing the release, which if known by him or her must have
 12 materially affected his or her settlement with the debtor."

13 Plaintiff having been apprized of the statutory language of Civil Code Section 1542 by his
 14 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and
 15 all rights he/she may have pursuant to the provision of that statute and any similar provision of
 16 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injury and the liability
 17 of the government for damages pertaining thereto are found hereinafter to be other than or
 18 different from the facts now believed by them to be true, the Agreement shall be and remain
 19 effective notwithstanding such material difference.

20 12. **Payment by Check.** Payment of the Settlement Amount will be made by check
 21 drawn on the United States Postal Service for three hundred ninety seven thousand and five
 22 hundred dollars and zero cents (\$397,500.00) and made payable to, Leon B. Hoppe, Jr. and
 23 Kneisler, Schondel & Hubbs. The check will be mailed to Plaintiff's attorneys, Kneisler,
 24 Schondel & Hubbs, at the following address: P.O. Box 5767, Santa Rosa, CA 95402. Plaintiff's
 25 attorney agrees to distribute the net settlement proceeds to the Plaintiff. Plaintiff and his attorney
 26 have been informed that payment of the Settlement Amount may take sixty (60) days or more
 27 from the date that the Court "so orders" this Agreement to process.

28 13. **Tax Liability.** If any income tax liability is imposed upon Plaintiff based on
 payment of the Settlement Amount, Plaintiff shall be solely responsible for paying any such

determined liability from any government agency. Nothing in this Agreement constitutes an agreement by the United States of America concerning the characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United States Code.

14. Waiver of Workers Compensation Claims Against United States of America.

Endurance Reinsurance Corporation of America, also known as First Comp. Insurance Agency, Inc., (hereinafter, "First Comp"), and its administrators, successors, or assigns agree to release and waive any and all claims, liens, rights, and causes of action incident to or arising from, and by reason of any and all known and unknown, foreseen and unforeseen personal injuries, or damage to property and the consequences thereof, which they may have or hereafter acquire against the United States of America on account of the same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. This release and waiver includes all claims, rights, liens, and causes of action, which now exist or may hereafter accrue, arising from workers' compensation benefits and related expenditures paid to date or to be paid in the future, to or on behalf of Leon B. Hoppe, Jr., by Kelsay Trucking and/or First Comp, resulting from the subject incident, the accident which occurred on or about July 30, 2008, and the consequences thereof.

15. Not a Settlement of Plaintiff's Separate Worker's Compensation Case.

Notwithstanding any of the foregoing, Plaintiff is not waiving his right to receive workers' compensation benefits. This Agreement is not a settlement of Plaintiff's workers' compensation claims. This Agreement is a settlement of Plaintiff's civil case only. Plaintiff and the workers' compensation carrier/employer will enter into a completely separate written agreement regarding the resolution of Plaintiff's workers' compensation claims as well as the compensation carrier's lien and credit rights.

16. Construction. The United States of America, Leon B. Hoppe, Jr., and First Comp each hereby stipulates that it has been represented by and has relied upon independent counsel in the negotiations for the preparation of this Agreement, that it has had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and understands all of the

1 terms of the Agreement and the legal consequences thereof. For purposes of construction, this
 2 Agreement shall be deemed to have been drafted by all signatories to this Agreement and shall
 3 not, therefore, be construed against any signatory for that reason in any subsequent dispute.


4 17. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
 5 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
 6 any way be affected or impaired thereby.

7 18. **Integration.** This instrument shall constitute the entire Agreement between the
 8 Parties, and it is expressly understood and agreed that the Agreement has been freely and
 9 voluntarily entered into by the Parties and First Comp with the advice of counsel, who have
 10 explained the legal effect of this Agreement. The Parties further acknowledge that no warranties
 11 or representations have been made on any subject other than as set forth in this Agreement. This
 12 Agreement may not be altered, modified or otherwise changed in any respect except by writing,
 13 duly executed by all of the Parties or their authorized representatives.

14
 15 DATED: 9/28/12


 LEON B. HOPPE, JR.
 Plaintiff

16
 17
 18 DATED: 10/1/12

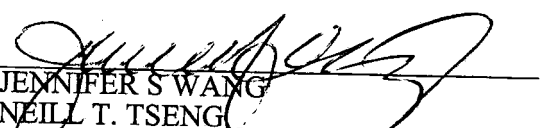

 ROBERT C. HUBBS
 KNEISLER, SCHONDEL AND HUBBS
 Attorneys for Plaintiff, Leon B. Hoppe, Jr.

19
 20
 21 DATE: _____

 SHEA CONWAY
 FIRST COMP INSURANCE

22
 23
 24 MELINDA HAAG
 United States Attorney

25
 26 DATED: 12/11/12

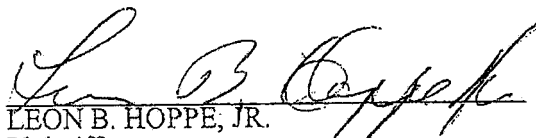

 JENNIFER S. WANG
 NEILL T. TSENG
 Assistant United States Attorney
 Attorneys for Defendant

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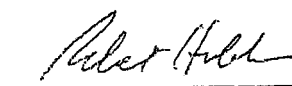
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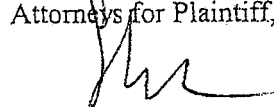
DATED: 9/28/12


LEON B. HOPPE, JR.
Plaintiff

DATED: 10/1/12


ROBERT C. HUBBS
KNEISLER, SCHONDEL AND HUBBS
Attorneys for Plaintiff, Leon B. Hoppe, Jr.

DATE: 12/10/12


SHEA CONWAY
FIRST COMP INSURANCE

MELINDA HAAG
United States Attorney

DATED: _____

JENNIFER S WANG
NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 12/12/12



HON. RICHARD SEEBORG
United States District Judge

Exhibit A

MELINDA HAAG (CSBN 132612)
 United States Attorney
 ALEX G. TSE (CSBN 152348)
 Chief, Civil Division
 JENNIFER S WANG (CSBN 233155)
 Assistant United States Attorney
 NEILL T. TSENG (CSBN 220348)
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v.

UNITED STATES OF AMERICA,
 UNITED STATES POST OFFICE,
 UNITED STATES POSTAL SERVICE, and
 DOES 1 to 100,

Defendants.

No. C11-0540 RS

**STIPULATION OF DISMISSAL WITH
 PREJUDICE**

THE PARTIES IN THE ABOVE-CAPTIONED ACTION HEREBY SUBMIT THE
 FOLLOWING STIPULATION:

Pursuant to Federal Rule of Civil Procedure 41(a), plaintiff Leon B. Hoppe, Jr. and defendant
 United States of America hereby stipulate to dismiss with prejudice the above-captioned action,
 including all claims that were asserted therein. Each party will bear its own costs and attorneys'
 fees.

DATED:

By: _____
 LEON B. HOPPE, JR.
 Plaintiff

KNEISLER, SCHONDEL AND HUBBS

DATED: _____

By: _____
ROBERT HUBBS
Attorneys for Plaintiff

MELINDA HAAG
United States Attorney

DATED: _____

By: _____
JENNIFER S WANG
NEILL T. TSENG
Assistant United States Attorneys

[PROPOSED] ORDER

The Stipulation of Dismissal with Prejudice is granted and this entire action is dismissed with prejudice.

IT IS SO ORDERED.

DATED: _____

HON. RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE